



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### **PIEDMONT REGIONAL OFFICE**

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Molly Joseph Ward  
Secretary of Natural Resources

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Director

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Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
ATLANTIC WASTE DISPOSAL, INC.  
FOR THE  
ATLANTIC WASTE LANDFILL  
Virginia Water Protection Permit No. 07-2407**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Atlantic Waste Disposal, Inc., regarding the Atlantic Waste Landfill, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Atlantic" means Atlantic Waste Disposal, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Atlantic is a "person" within the meaning of Va. Code § 10.1-1400.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
7. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
8. "Facility" or "Landfill" means the Atlantic Facility located at 3474 Atlantic Lane in Waverly, Virginia.
9. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
10. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Permit" or "Virginia Water Protection Permit" means individual permit 07-2407 issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
14. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
15. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an

alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

16. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
17. "Regulations" means the VWP Permit Program Regulations, 9 VAC 25-210 *et seq.*
18. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
21. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
22. "USACE" means the United States Army Corps of Engineers.
23. "µs/cm" means micro siemens per centimeter a measure of conductivity Studies of inland fresh waters indicate that streams supporting good mixed fisheries have a range between 150 and 500 µs/cm.
24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.
26. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.



27. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Atlantic owns and operates the Landfill in Waverly, Virginia.
2. On May 30, 2008, DEQ issued Permit No. 07-2407 to Atlantic. The Permit authorized permanent impacts to 0.94 acres of a forested wetland, which is an unnamed tributary of Pigeon Swamp.
3. On March 10 and 11, 2015, DEQ staff inspected the Landfill and observed leachate seeping from the southern slope of the landfill and flowing into a wetland area, which is an unnamed tributary to Pigeon Swamp. On March 11, 2015, DEQ staff sampled surface waters approximately 100 feet away and down-flow from the leachate containment pool. Sampling was conducted with a Hydrolab meter which indicated conductivity of 5215  $\mu\text{s/cm}$ , pH of 7.14 standard units and a dissolved oxygen concentration of 1.54 mg/l. Additionally, at this location, staff noted a strong odor and the water appeared cloudy and brown with a minor sheen, bubbles and foam.
4. Va. Code § 62.1-44.5(A) states, "Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;...3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses..."
5. Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50(A) of the VWP Permit Regulations state that except in compliance with a permit no person shall dredge, fill or discharge any pollutant into or adjacent to surface waters, excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: filling or dumping.
6. Part II.C of the Permit states, "The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment."
7. Part II.Q of the Permit states, "Except in compliance with this VWP permit, it shall be unlawful for the permittee to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances... 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses. 4. On or after October 1, 2001 conduct the following activities in a wetland: a. New activities that cause significant alteration or degradation of existing wetland acreage or functions."

8. Part I.C.14 of the Permit states, "Measures shall be employed at all times to prevent and contain spills of fuels, lubricants, or other pollutants into surface waters."
9. On April 2, 2015, DEQ issued NOV No. 15-03-PRO-701 for the violation of Va. Code §62.1-44.5(A) and Permit No. 07-2407 Parts II.C and Part II.Q.
10. On October 27, 2011, DEQ staff met with a representative of Atlantic to discuss the violations cited in the April 2, 2015, NOV as well as a separate NOV issued on April 1, 2015 for violations of the Waste Management Laws and Regulations. Atlantic acknowledged the leachate discharge to state waters and is proceeding with remedial and investigative corrective action on active leachate seeps.
11. Based on the results of the site inspection, review of the permit file, the letter sent by Atlantic on October 7, 2011, and the October 27, 2011 meeting, the Board concludes that Atlantic has violated Permit conditions Part I.C.14, Part II.C, Part II.Q, Va. Code §§ §62.1-44.5(A) & 62.1-44.15:20, and 9 VAC 25-210-50(A), as described in paragraphs C(1) through C(8), above.
12. In order for Atlantic to return to compliance, DEQ staff and representatives of Atlantic have agreed to the Schedule of Compliance, which is incorporated in a separate Land Protection Resources Consent Order. This Consent Order requires the payment of a civil charge for the violations.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Atlantic and Atlantic agrees to pay a civil charge of \$8,450 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Atlantic shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Atlantic shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**



1. The Board may modify, rewrite, or amend this Order with the consent of Atlantic for good cause shown by Atlantic, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Atlantic admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact, and conclusions of law in this Order.
4. Atlantic consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Atlantic declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Atlantic to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Atlantic shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Atlantic shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Atlantic shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Atlantic. Nevertheless, Atlantic agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Atlantic has completed all of the requirements of the Order;
  - b. Atlantic petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Atlantic.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Atlantic from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Atlantic and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Atlantic certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Atlantic to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of Atlantic
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no

representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Atlantic voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20<sup>th</sup> day of NOVEMBER, 2015.



Michael P. Murphy, Regional Director  
Department of Environmental Quality

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Atlantic voluntarily agrees to the issuance of this Order.

Date: 9/22/15 By: [Signature], Director of Disposal Operations  
(Person) (Title)

Commonwealth of Virginia

City/County of Sussex

The foregoing document was signed and acknowledged before me this 22<sup>ND</sup> day of

September, 2015, by H. Scott Shacker who is

\_\_\_\_\_ of, on behalf of the company.

[Signature]  
Notary Public

285662  
Registration No.

My commission expires: April 30, 2016

Notary seal:

